IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL REVISION APPLICATION NO. 479 OF 2007**

Vasantrao Gudacharva Jahagirdar
Age 75 yrs, Occ.Service,
R/o.Plot No.71, Bhim Nagar,
Majrewadi, Jule Solapur,
Dist.Solapur. .. Applicant.

V/s.

Sharanbasappa Vishwanath Halli
Age Adult. Occ.Business,
R/o.190/E,Budhwar Peth, Solapur. .. Respondent.

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Mr.A.A.Kumbhakoni i/by Viresh Purwant for the Applicant.

Mr.G.S.Godbole for the Respondent.

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**CORAM : S. A. BOBDE, J.**

**DATED : 12th OCTOBER, 2007.**

**ORAL JUDGMENT :-**

. The applicant- tenant has challenged concurrent findings of both the courts below that he is liable to be evicted from the suit premises on the ground that the applicant-tenant has obtained alternate accommodation and that the tenant has not used the suit premises for a period of six months prior to the filing of the suit.

2. Mr. Kumbhakoni, the learned counsel for the petitioner submitted that the respondents have not properly pleaded the ground of non-user of the premises for a period of six months prior to the suit as is required to be pleaded by the section 13(k) of the

Bombay Rent Act, which reads as follows :

> 13(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

3. I am not inclined to allow this ground to be urged since it is being urged for the first time in this revision, without being raised in any of the courts below. It is clear that the parties were perfectly conscious of the grounds that is being pleaded and in fact have gone to trial on the basis of the understanding of the pleadings. The parties have already led evidence and argued the existence or otherwise of the essential ingredients of 13(k). The Courts below have considered the availability of the grounds. See **Sardul Singh vs. Pritam Singh & Ors, reported in (1999) 3 Supreme Court Cases 522**. It is settled law that where the parties have gone to the trial with full knowledge of the pleadings they ought not to be allowed to raise a ground for the first time at a much later stage. No prejudice can be said to be caused to them.

4. Even otherwise there is no merit in the submission of the pleadings being defective. The respondents landlords have clearly pleaded in paragraph 3 of the plaint that the petitioner- tenant has kept the suit premises locked for a period of 7 years. In the contest, this clearly mean that the premises were kept locked continuously for a period of 7 years. If there are any gapes it is for the defendant to plead and prove them. The other alleged vagueness in the pleadings is that it is not specified that the tenant has kept the premises locked continuously for the period preceding the suit. In any case, the petitioner understood the pleadings as such and the parties led evidence on the point and argued on the point whether the premises were kept locked continuously. In fact the learned District Judge has observed that the suit premises were kept locked for a period of 4 years preceding the suit. It must be noted that the finding in this regard by the courts below is based on clear and cogent evidence and is not liable to be interfered with. I would respectfully rely on the observations of the Supreme Court in **Kedar Lal Seal vs. Hari Lal Seal, AIR 1952 SC 47.** Bose J. speaking for the Court said in para 51 :

> "I would be slow to throw out a claim on a mere technicality of pleading when the substance of

> the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded. In any event, it is always open to a Court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs."

5. The learned counsel for the petitioner also urged that the finding on the other ground of eviction, namely, that the petitioner-tenant has obtained alternate accommodation, is defective. There appears to be some substance in this contention. However, I am of view that the decree is clearly valid on the other ground, which has been dealt with above. It is, therefore, not necessary to deal with the second ground. As such there is no merit in the petition, which is liable to be dismissed and is hereby dismissed.

(S.A.BOBDE,J)

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